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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th June 2008

No.6471-1i/1 (B)-8/2007/L.E.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 16th May, 2008 in Industrial Disputes Case No.5/2007 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. The United Puri Nimapara Central Co-operative Bank Ltd., Puri and their workman Shri Benudhar Mohanty was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO.5/2007

The 16th May, 2008

Present : Shri Srikanta Nayak, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between: The Management of
M/s. The United Puri Nimapara
Central Co-operative Bank Ltd.,
Puri .. First-Party—Management

And

Their workman

Shri Benudhar Mohanty,
Cadre Secretary,
S/o. Late Banamber Mohanty,
Village- Chaka Balanga,
P.O./P.S.- Balanga,
Dist- Puri .

.. Second-Party—Workman

Appearances : Shri N.K. Mohanty, Advocate .. For the First-Party—Management

Shri Nityananda Satpathy, Advocate .. For the Second-Party—Workman

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of section 12 read with Clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their order No.7076-li/1-(B)/2007/L.E., dated the 30th May, 2007 : —

“ Whether the action of the Management of M/s. The United Puri Nimapara Central Co-operative Bank Ltd., Puri in terminating the services of Shri Benudhar Mohanty, Cadre Secretary is legal and/or justified ? If not, what relief Shri Mohanty is entitled to?”

2. The case of the second party (hereinafter referred to as the ‘workman’) is that he was appointed by the First-party-Bank (hereinafter referred to as the ‘Management’) as a Cadre Secretary on the 1st March 1981 and he was deputed to Balanga S.C.S. Ltd., to act as its Secretary. While he was working there Shri A.K. Chand, Secretary of the Management suspended him. So, he moved the Co-operative Tribunal and on the 17th April 2004 in T.A. No. 7/2004 the suspension order was held illegal and a direction was passed to reinstate him but the Management did not reinstate him in service and Shri A.K. Chand, Secretary stopped his pay and salary and no subsistence allowance was paid to him. After

the transfer of Shri A.K. Chand, Shri M.S. Behera was appointed as the Secretary. He also failed to implement the orders passed in T.A. No.7/2004 and issued a chargesheet against him. He filed a show-cause denying the charges and asserting that the Secretary of the Management has no power to suspend him or to issue a chargesheet. No witness was examined in the enquiry nor any document was referred to. The enquiry officer is subordinate to the Secretary and being influenced by the Secretary he gave a false report stating that the charges were proved. He was not given the copy of the enquiry report. The second show-cause notice was served on him on the 4th June 2005 and dispatched on the 28th May 2005 under registered post though the Committee fixed the meeting to 18th May 2005. The Enquiry Officer and the disciplinary authority did not observe the principles of natural justice and terminated his service. So, he raised an industrial dispute and on failure of conciliation, the matter was referred to this Tribunal for adjudication.

3. The case of the Management is that during incumbency of the workman as Secretary of Balanga S.C.S. Ltd., he was involved in misappropriation of the funds of the society and he has caused huge loss to the Society and he also tampered with the records and violated the Rules. So, a chargesheet was issued against him and an enquiry officer was appointed. The enquiry officer provided the workman with all such opportunities to defend himself in the enquiry and found that the charges were established. The second party was asked to show cause on the 25th March 2005 and a copy of the report was sent to him. The findings of the enquiry officer were placed before the disciplinary authority in its sitting on the 30th April 2005 and it was decided to dismiss the workman from service as the charges were grave in nature. There was no breach of the principles of natural justice and the Secretary is competent to initiate disciplinary proceeding. Further it is pleaded that the reference is not maintainable.

4. On the aforesaid pleadings of the parties, the following issue has been framed:—

ISSUE

1. “Whether the action of the Management of M/s. The United Puri Nimapara Central Co-operative Bank Ltd., Puri in terminating the services of Shri Benudhar Mohanty, Cadre Secretary is legal and/or justified ? If not, what relief Shri Mohanty is entitled to ?”

5. The workman examined one witness and the Management examined two witnesses in support of their respective case.

6. *Issue No. 1 :* Since the workman challenged the finding of the Management, burden lies on him to prove that there was breach of the principles of natural justice or the removal order is illegal one. In the decision reported in 2004 [100 FLR Page 547 (Orissa) (Consumer Co-operative Federation Ltd. vrs. Presiding Officer, Labour Court)], their Lordship held that “since the dispute was raised by the workman challenging the action of the Management in dismissing him from service, the onus lies on the workman to lead evidence.”

W.W. No.1 deposed that he was appointed as a Cadre Secretary by the Management and was deputed to work in the Balanga S.C.S. Ltd. While he was working there, he was suspended by Shri A.K. Chand, Secretary who had no power to do so in view of the Cadre Rules and it is the Managing Committee of Balanga S.C.S. Ltd. who can pass orders for his suspension from service. So, he preferred an Appeal in the Co-operative Tribunal and the Tribunal hold that the order of suspension is illegal and directed for his reinstatement in service and to pay his salary. But, Shri A.K. Chand withheld his monthly salary from April, 2002. During pending of the appeal before the Registrar, Co-operative Societies, Orissa Shri A.K. Chand was transferred and Mr. M.S. Behera joined as Secretary. He pressurized him to withdraw the appeal but he did not oblige. So, he withheld issuance of receipt book to the society and issued a chargesheet containing 21 charges. The nature of documents referred to were not noted in the charge. So, he requested the Management to supply the copies of the documents but the Management failed to supply the same. He filed his show-case denying the charges. As per Rule 21 of the Staff Service Rules of the Bank, an employee on deputation is subject to such terms and conditions as may be fixed by the Managing Committee of the Bank from time to time but in his case no terms and conditions were fixed by the Balanga S.C.S. Ltd. The Secretary of the Bank is not authorized to frame charge under the Staff Service Rules. So, the charge is illegal one. The Secretary appointed the enquiry officer, who had

not supplied him the list of witnesses or the documents. He raised objection about the appointment of the enquiry officer but nobody listened to his objection. No witness was examined in the enquiry. Being influenced by the Secretary, the enquiry officer gave a report that the charges were established. The Secretary without placing the report before the Managing Committee issued a second show cause notice on the 4th May 2005 which was dispatched on 28th May 2005 and served on him on the 3rd June 2005. By that time on the 18th May 2005 the Committee decided to terminate his service and on the 4th June 2005 his service was terminated. The workman stated that there was no observance of the principles of natural justice.

M.W. No.2 deposed that he was appointed as the Enquiry Officer to the charge and he fixed the dates of enquiry to the 27th July 2004, 21st September 2004, 8th October 2004, 22nd November 2004 and 27th December 2004. The Management placed the documents through Shri Chitta Ranjan Nayak, Secretary, Balanga S.C.S. Ltd. The workman attended the enquiry but refused to sign the ordersheets or the enquiry proceedings. He had verified the documents but had not questioned the genuineness of the documents. The total deposit of the Mini Bank as on the 31st December 2003 was Rs. 69,68,486.00 and the investment was Rs. 67,96,713.00. So, the mismatch comes to Rs. 1.71 lakhs. As per the general ledger there was a deficit of Rs. 26.07 lakhs and such ledger proved charge No.2. On his verification of the Cash Book at Page 149, dated the 26th July 2003 it was found that the workman availed Rs. 30,000/- as advance but subsequently he corrected it by tampering the book and shown it as a loan. Page 134 of the general ledger reveals that the workman financed Rs. 10.67 lakhs to small businessmen out of the money of the depositors illegally. Shri Niranjan Prusty deposited Rs. 13,500/- on the 20th May 1999 and availed Rs. 60,000/- on the 22nd May 1999. Artatrana Prusty deposited Rs. 38,000/- on the 2nd April 1981 but he availed loan of Rs. 1 lakh on the 3rd April 2001. All these show that the workman violated the Rules. In all cases of small business loan he had not properly calculated the interest and the audit report reveals that the society sustained huge loss both in S.C.S. and in Mini Bank and the

accumulated loss of the Society was Rs. 25.02 lakhs but the profit reflected in the Mini Bank to the tune of Rs. 2.73 lakhs in the year 1999-2000 was not correct. The workman deliberately suppressed the records of the society. The audit report showed low collection of 27% in 1998-1999, 5% in 2000-2001, 8% in 2001-2002 and 13% in 2002-2003 and the said low collection accumulated to loss of Rs. 10.02 lakhs in 1999-2000, Rs. 14.88 lakhs in 2000-2001 and Rs. 25.02 lakhs in 2001-2002. So, the audit report proved the negligence of the employee.

M.W. No.1 deposed that decision was taken by the Committee after the enquiry officer after giving due notice and opportunity to the second party conducted the enquiry. After receipt of the enquiry report the second party was asked to show-cause on the findings of the enquiry officer on the 25th March 2005 along with a copy of the enquiry report. The finding was placed before the disciplinary authority on the 30th April 2005, who decided to terminate his service. The second party during the period of suspension never attended the headquarters at any point of time nor submitted the non-engagement certificate.

7. As it appears, the workman has not challenged the factual finding of the enquiry officer. The evidence of M.W. No.2 receives support from the documents Exts. V, the general ledger, Ext. A, the copy of the cash book, Ext. BB, the loan ledger, Ext. CC, the audit report, Ext. DD, the audit report. These documents establish the facts alleged in the chargesheet. W.W. No.1 has not uttered a single word questioning the genuineness of the documents nor he has challenged the finding of fact. The finding is challenged on the ground that there was no observance of the principles of natural justice and he was victimized and the Secretary had no power to issue a chargesheet and as per Rule 21 of the Staff Service Rules, the Managing Committee is the only authority to place him under suspension. Ext. 8 is the Staff Service Rules of the Bank. Clause 21 of the said Rules reads that an employee of the Bank may be deputed by the competent authority to work in any other Co-operative Bank and Co-operative Society subject to such terms and conditions of deputation as may be fixed in each case by the Managing Committee of the

Bank from time to time and approved by the Registrar, Co-operative Society,. So, Rule 21 has not laid down that the Management of the Bank has the power to take disciplinary action. Admittedly, the Balanga S.C.S. Ltd. has not framed any Rules. So, the contention of the workman has no merit at all. Ext. Z is the Cadre Rule and Rule 5 thereof in Clause 1 shows that the Member-Secretary has the power to impose minor penalties and it is not disputed that the order of suspension is a minor penalty. When the Rule empowers the Secretary to impose minor penalty, it cannot be said that he has no power to issue a chargesheet or to constitute an enquiry committee because without issuing the chargesheet or enquiring into the matter no punishment can be imposed. In the decision reported in AIR 2008 (S.C) Page 907 (*Sakiri Vasu vrs. State of U.P. & Others*), their Lordships held that “when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.” Since the Cadre Rule authorizes the Secretary to impose minor punishments, it can be said that impliedly he was authorized to issue a chargesheet and constitute an enquiry committee. So, the contention of the workman that the Secretary had no power to initiate a proceeding has no merit at all.

8. Coming to the next contention of the workman that the authority had not paid him the subsistence allowance and pay, Exts. 13, 13/1 and 13/2 show that the employee filed petition before the Enquiry Officer complaining about non-payment of salary. M.W. No.1 admitted that no subsistence allowance or pay was paid to the workman and M.W. No.2 admitted that he cannot say why the pay was not given to the workman till 2005. Ext.3 is the order passed in T.A. 7 of 2004. It shows that the order was passed to reinstate the workman and to pay his salary. Inspite of such order by a Competent Court, the Management has not paid the salary of the workman. The only ground taken is that they

had preferred an O.J.C. before the Hon'ble Court but the Management has not filed any orders of the Hon'ble Court nor it is the case of the Management that the orders of the Co-operative Tribunal was stayed by the Hon'ble Court. So, non-payment of salary inspite of orders of a Competent authority amounts to victimization and unfair labour practice. In the decision reported in 2008 (117) FLR (Bombay) Page 143 (Ruby Coach Builders Ltd. vrs. P.S. Ghosh), their Lordships held that "denial to pay such wages is also an unfair labour practice."

On suspension, an employee is entitled to subsistence allowance and this is his right. So, non-payment of suspension allowance amounts to causing prejudice. In the decision reported in 2000 (87) Page 1 (S.C.) (Jagadamba Prasad vrs. State of U.P.), their Lordships held that "payment of subsistence allowance in accordance with the rules to an employee under suspension is not a bounty, it is a right." In the decision reported in 1996 (I) CLR Page 144 (S.S. Podu vrs. N. Jute Mills Ltd.), their Lordships held that "failure to pay subsistence allowance may be taken as a cause of prejudice."

Since the Management has not paid the salary nor paid subsistence allowance, there was a breach of the principles of natural justice and the Management is guilty of unfair labour practice.

9. Rule 6 of Ext. 8 reveals that the Appointment Committee consisting all the persons as specified below shall be the appointing authority in respect of the posts under Grade-I to VI services—

- (1) President of the Central Co-operative Bank;
- (2) The Divisional Deputy Registrar of the Co-operative Societies of the area;
- (3) One Director of the Bank;
- (4) The Chief Executive of the Bank.

As per Rule 5 the post of Secretary comes under Grade VI (a). So, the Appointment Committee consisting the persons mentioned above are the disciplinary authority. M.W. No.2 also deposed about that fact. Ext. H is the Resolution said to have been passed by

the Committee to dismiss the Secretary. Ext. H is signed only by the President. It does not contain the signatures of other members nor it reveals that the other members participated in it. As it appears, Ext. H was passed by the President alone. The President alone is not competent to pass a removal order and this fact was also admitted by M.W. No.2. So, Ext. H has no legal effect at all as it was not passed by the appointing authority. The specific case of the workman is that the enquiry report and the second show cause were not sent to him in time and he specifically deposed that the notice was dispatched on the 28th May 2005 which he received on the 3rd May 2005 whereas it was decided to hold the committee on the 18th May 2005. M.W. No.2 also admitted that the notice was sent on the 28th May 2005. So, the meeting was held on the 18th May 2005. The admission and Ext. 14 and Ext. 15 clearly shows that the notice was served on the workman after expiry of the date. Admittedly, the enquiry officer was not the disciplinary authority and it is the appointment committee, who is the disciplinary authority. So, non-sending of the copy of the enquiry report and not providing opportunity to the workman to file his show-cause on the enquiry report amounts to violation of the principles of natural justice. In the decision reported in AIR 1994 (SC) Page 1074 (Managing Director of ECIL, Hyderabad vrs. B. Karunakar), their Lordship held that “when enquiry officer is not the disciplinary authority, the delinquent-employee has a right to receive a copy of the enquiry officer’s report before the disciplinary authority arrives at the conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee’s right to defend himself against the charges levelled against him. The denial of the enquiry officer’s report before the disciplinary authority takes its decision on the charge is a denial of the reasonable opportunity to the employee to prove his innocence and a breach of the principles of the natural justice.”

Since there has been a breach of the principles of the natural justice, the orders passed against the workman cannot be termed as a legal one. So, the dismissal order passed against the workman is illegal one.

10. Admittedly, the Management has not paid the salary of the workman. So, he is entitled to full back wages with all service benefits. Hence ordered :—

The action of the Management in terminating the services of Shri Benudhar Mohanty, Cadre Secretary is neither legal nor justified. He is entitled to reinstatement in service with full back wages.

The reference is answered accordingly.

Dictated and corrected by me

Srikanta Nayak

dt. 16-05-2008

Presiding Officer,

Industrial Tribunal,

Bhubaneswar.

Srikanta Nayak

dt. 16-05-2008

Presiding Officer,

Industrial Tribunal,

Bhubaneswar.

By order of the Governor

G. JENA

Deputy Secretary to Government